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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,675	10/28/2003	Robert R. Mantell	7034/107	6826
757 7590 11/27/2007 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER BOUCHELLE, LAURA A	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/696,675

Applicant(s)

MANTELL, ROBERT R.

Examiner

Laura A. Bouchelle

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3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16,30-33 and 37-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16,30-33 and 37-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/29/07 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2, 5, 8, 11, 13, 16, 37, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binard et al (US 3858572) in view of Lopez (US 4895562). Binard discloses an insufflation device comprising a gas delivery assembly having an output 70 coupled to a gas delivery path, a dual capacity tube having a first tube 70 and a pair of tubes 88a, 88b attached to the second end of the first tube, an adapter 86 connecting the first tube with the pair of tubes, a valve 46 that operates pneumatically controlling the insufflation. See Fig. 1. The device of Binard is inherently disposable.

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4. Claims 1, 37 differ from Binard in calling for the inner diameter of the first tube to be greater than the inner diameter of the second tubes. Binard does not disclose any requirements for the diameter of the tubes. It would have been a matter of obvious design choice for the first tube to have an inner diameter larger than the inner diameter of the second tubes to meet the requirements of the intended use of the device.

5. Claims 1, 37 differ from Binard in calling for the adaptor to accommodate tubes having incompatible and compatible inner diameters. Lopez teaches a connector for a medical device that is able to accommodate tubes of different inner diameters so that the connector can be used with a variety of different sized tubes as is required by the particular use of the device (Col. 1, lines 30-32). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the connector of Binard so that it can accommodate tubes of differing inner diameters as taught by Lopez so that the device can be used with varied sized tubes to meet the needs of the intended use of the device.

6. Claim 30, 32, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binard et al in view of Zander (US 6299592). Claims 30, 39 differ from Binard in calling for the rate of gas into the cavity to be at least 20 liters per minute. Zander teaches a laparoscopic insufflator wherein the flow rate of gas can be controlled to be from zero to 30 liters per minute as is required by the particular application. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Binard to have a flow rate of at least 20 liters per minute as taught by Zander.

7. Claims 3, 4, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binard in view of Lope in view of Jaffe et al (US 2002/0059933). Claim 3 differs from Binard in view of Lopez in calling for the valve to operate manually. Claim 4 calls for the valve to operate hydraulically. Claim 6 calls for the valve to operate electrically. Jaffe teaches an insufflation machine having a valve that operates manually, hydraulically, or electrically to provide enhanced reliability of the valve and the device (Page 2, paragraph 0016). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Binard in view of Lopez to have a valve that operates manually, hydraulically or electrically as taught by Jaffe to provide enhanced reliability of the valve and the device.

8. Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Binard in view of Lopez in view of Jaffe as applied to claim 6 above, and further in view of Lucey (US 6042573). Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Binard in view of Lopez in view of Lucey. Claim 7 differs from the teachings above in calling for the insufflator to comprise a controller and the valve to be operated by a signal from the controller. Claim 8 differs from Binard in calling for the valve to be a pressure relief valve. Lucey teaches a laparoscopic surgical device comprising a valve that is controlled in response to a signal to allow the flow of gas to the body to be controlled in response to the pressure of the insufflation gas (Col. 1, lines 18-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Binard in view of Jaffe to include a controller to

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operate the valve in response to a signal as taught by Lucey to allow the flow of gas to the body to be controlled in response to the pressure of the insufflation gas.

9. Claims 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binard in view of Lopez in view of Ott et al (US 6068609). Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Binard in view of Zander as applied to claim 30 above, and further in view of Ott. Claims 9, 10, 31 differ from Binard in view of Lopez in calling for the tubes to comprise filters. Ott teaches an apparatus for conditioning gas for use in a medical procedure such as endoscopy comprising tubes 160 having filters 110 to filter the insufflation gas to prevent inorganic particles such a metallic fillings or particles, rust, dust, and polymer particles from passing into the body cavity (Col. 1, lines 39-41). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Binard in view of Lopez to include filters as taught by Ott to filter the insufflation gas to prevent inorganic particles such a metallic fillings or particles, rust, dust, and polymer particles from passing into the body cavity.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Binard. Claim 12 differs from Binard in calling for a second dual capacity tube. A mere duplication of parts has no patentable significance unless a new and unexpected result is produced as a result of the duplication of parts. See MPEP 2144.04. Therefore, as applicant has not disclosed that the inclusion of a second dual capacity tube provides a new and unexpected result, there is no patentable significance over the prior art.

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11. Claims 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binard in view of Lopez. Claim 33, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binard in view of Zander. Claims 14, 15, 33, 40 call for the specific diameters of the tubes. Binard fails to specifically point out the dimensions of the tubes. Where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. See MPEP 2144.04. In the instant case, one of ordinary skill in the art would not expect Binard to perform differently than a device with the claimed relative dimensions, and therefore, the current invention is not patentably distinct over the prior art.

Response to Arguments

12. Applicant's arguments with respect to claims 1, 2, 5, 8, 11, 13, 16, 37, 38 have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's arguments with respect to claims 30, 32, 33, 39, 40 have been fully considered but they are not persuasive. Applicant argues that Binard does not teach a spike port that prevents flow of the insufflation gas until the spike port is opened. Binard teaches spike ports 78 that are closed by clamps 92a,b and do not allow gas to flow until the ports have been opened.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Laura A Bouchelle
Examiner
Art Unit 3763

